

906 KAR 1:170. Administrative subpoenas.

RELATES TO: KRS 194A.025, 194A.030, 205.8453

STATUTORY AUTHORITY: KRS 194A.050(1), 205.170(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) directs the Secretary of the Cabinet for Health and Family Services to promulgate, administer, and enforce administrative regulations relating to the operation of programs within the cabinet. KRS 194A.030(1) provides that the Office of the Inspector General shall be responsible for the conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted, and the conduct of special investigations requested by the secretary, commissioners, or office heads of the cabinet into matters related to the cabinet or its programs. KRS 205.8453(4) allows the Cabinet for Health and Family Services to institute necessary or useful measures in controlling fraud and abuse. KRS 205.170(1) allows the Secretary of the Cabinet for Health and Family Services or the Secretary's authorized representative to issue subpoenas to compel the attendance of witnesses and production of books, papers, correspondence, memoranda and other records considered necessary and relevant as evidence in connection with the administration of the cabinet. This administrative regulation provides for the delegation of the Secretary's subpoena power to the Inspector General and prescribes the conditions of that delegation of power. The Inspector General may issue subpoenas to compel the production of documents, records, or other physical evidence relevant to reviews, audits, or investigations conducted by the Office of Inspector General.

Section 1. Definitions. (1) "Documents" means information in any form or format that is relevant to a review, audit, or investigation conducted by the Office of Inspector General and may include:

- (a) Medical records;
- (b) Written documents;
- (c) Computer files;
- (d) Photographs;
- (e) Audio and video recordings;
- (f) Employment or wage data;
- (g) Pension payment or insurance payment data;
- (h) Account information from financial institutions; or
- (i) Applications or other documents that establish eligibility for public assistance programs.

(2) "Justified by the circumstances" means that:

- (a) Information requested by the Inspector General or Inspector General's designee is relevant to a review, audit, or investigation conducted by the Office of Inspector General; and
- (b) The Inspector General or Inspector General's designee has reasonable grounds to believe that the requested information exists.

Section 2. Administrative Subpoenas. (1) If justified by the circumstances, the Inspector General or Inspector General's designee may issue a subpoena in accordance with KRS 205.170 to require the production of documents at a specified time and place.

(2) If information requested by the Inspector General or Inspector General's designee is encrypted, the respondent shall:

- (a) Provide the information in a readable format; and
- (b) Provide proof acceptable to the Inspector General or Inspector General's designee that the requested information has been translated to a readable format without error or omission.

(3) A person served with a subpoena in accordance with subsection (1) of this section shall not intentionally destroy, alter, or falsify documents requested by the Inspector General or Inspector

General's designee.

Section 3. Noncompliance. (1) If a person fails without good cause to produce requested documents in accordance with Section 2(1) of this administrative regulation, the Inspector General or Inspector General's designee may apply to the circuit court of the county in which compliance is sought for an appropriate order to compel compliance with the provisions of the subpoena.

(2) If a person served with a subpoena issued pursuant to Section 2(1) of this administrative regulation believes that the subpoena seeks to compel the production of documents that are protected, privileged, or not properly the subject of an administrative subpoena, the individual may, prior to the date designated for the production of the documents, apply to the circuit court of the county in which compliance is sought for an appropriate protective order limiting the scope of the subpoena or quashing it entirely. (35 Ky.R. 1115; eff. 1-5-2009.)